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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1959.

No. 687

MARY C. HUDSON, as Administratrix of the Estate of Herbert A. Hudson, Deceased,

Petitioner,

vs.

TRANSOCEAN AIR-LINES, a Corporation, and SLICK AIRWAYS, INC., a Corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

JOSEPH EDWARD SMITH,
Financial Center Building,
Oakland 12, California,
Attorney for Petitioner.

SHERIDAN DOWNEY, JR.,
JOHN B. KRAMER,
1212 Broadway,
Oakland 12, California,
Of Counsel.

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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

Your petitioner, Mary C. Hudson, as administratrix of the estate of Herbert A. Hudson, respectfully petitions this Honorable Court for a writ of Certiorari directed to the United States Court of Appeals, for the Ninth Circuit, to review and reverse the judgment of said lower Court, entered on the records of

said Court on the 9th day of December, 1959, affirming the judgment of the United States District Court, for the Northern District of California, Southern Division, when said District Court sustained respondent's motion for summary judgment.

OPINIONS OF COURTS BELOW.

The opinion and judgment of the United States Court of Appeals sought to be reviewed is reported in ..... Federal Reporter 2d, ..., affirming the decision on the authority of King v. Pan American World Airways, 270 Fed. 2d 355 (9th Cir. 1959). The judgment of this United States Court of Appeals (Appendix "C") affirmed the Judgment of the United States District Court, for the Northern District of California, Southern Division (Appendix "F").

JURISDICTION.

The United States Court of Appeals made its judgment on the 9th day of December, 1959, and it was entered on the 9th day of December, 1959.

Jurisdiction of this Court is conferred by Title 28, Section 1254, Sub-section 1 of the United States Code. June 25, 1948, c. 646, 62 Stat. 928.

> "Cases in the Court of Appeals may be reviewed by the Supreme Court by the following methods:

1. By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

QUESTION PRESENTED.

When the death of a person occurs on the high seas under such circumstances as to come within the provisions of the Federal "Death on the High Seas Act", will the provisions of the California Workmen's Compensation Act *extinguish* the federal cause of action and remedy, when the deceased was an employee of the respondent?

CONSTITUTIONAL PROVISIONS INVOLVED.

Two Constitutional provisions are involved. Article I, Section 8, Clause 3 of the United States Constitution:

> "The Congress shall have power . . . to regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes."

Article III, Section 2, Clause 1 of the United States Constitution:

> "The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . to all cases of admiralty and maritime jurisdiction."

STATUTES INVOLVED.

(a) Federal Statutes.

Death on the High Seas Act.

Section 1:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." (Mar. 30, 1920, c. 111, Sec. 1, 41 Stat. 537.)

Section 7:

"The provisions of any State Statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." (Mar. 30, 1920, c. 111, Sec. 7, 41 Stat. 538.)

The entire statute, sections 1-7, is set out in Appendix "D", pp. 26-28.

(b) State Statutes.

California Workmen's Compensation Act

Section 3600, California Labor Code:

"Liability for the compensation provided by this division, in lieu of any other liability whatsoever

to any person except as provided in section 3706, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur. . . ." (Stats. 1929, c. 227, p. 430, Section 1.)

Section 3601, California Labor Code:

"Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in section 3706, the exclusive remedy against the employer for the injury or death." (Stats. 1937, c. 90, p. 269; Section 3601.)

Section 3706 referred to above is not applicable in the case at bar.

STATEMENT OF THE CASE.

The United States District Court in admiralty had jurisdiction under the provisions of the Death on the High Seas Act, *supra.*

On July 12, 1953 a DC-6 Aircraft owned and operated by respondent Transocean Air Lines, Inc., departed Guam east bound for Hawaii carrying 49 passengers and a crew of eight which included the decedent Herbert Hudson, the co-pilot. The aircraft crashed into the Pacific Ocean approximately 340 miles east of Wake Island, being a point more than a marine league from any shore. Herbert Hudson did